

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10409-2009

## **BETWEEN:**

SOLICITORS REGULATION AUTHORITY

Applicant

and

JAMES THORBURN-MUIRHEAD

Respondent

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Before:

Mr A N Spooner (in the chair)

Mr M Fanning

Mrs L Barnett

Date of Hearing: 9th December 2011

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## **Appearances**

Margaret Bromley, solicitor of Bevan Brittan LLP, Kings Orchard, 1 Queen Street, Bristol BS2 0HQ for the Applicant.

The Respondent did not appear and was not represented.

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## **JUDGMENT**

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## **Allegations**

1. The allegation against the Respondent was that:
  - 1.1 He acted contrary to Rules 1.02, 1.03, 1.04 and 1.06 of the Solicitors Code of Conduct 2007 ("SCC") in that he behaved in a way which compromised his independence or integrity, was likely to have diminished the trust the public placed in him or the legal profession and his duty to act in the best interests of his clients by virtue of his conviction on 19 February 2011 when the Respondent was upon his own confession convicted upon indictment of 1 count of Failing to make a Required Disclosure, 2 counts of False Accounting and 2 counts of Theft and on 29 June 2011 he was sentenced to 16 months imprisonment.

## **Documents**

2. The Tribunal reviewed all the documents submitted by the Applicant, which included:
  - Application dated 17 December 2009.
  - Rule 5 Statement and exhibit bundle dated 17 December 2009
  - Supplemental Rule 7 Statement and exhibit bundle dated 26 September 2011
  - Sentencing Comments dated 29 June 2011
  - Application for an Indication of Sentence undated
  - Certificate of Conviction dated 19 February 2011
  - Statement of Costs dated 24 November 2011

Respondent:

- None.

## **Preliminary Matters**

3. Mrs Bromley informed the Tribunal that the Respondent's current address was HMP Ford. He had been served with the Rule 5 Statement which had been served upon him on 19 January 2010; it was evident that he had been aware of the proceedings as there had been two previous hearings and he had attended both. The Rule 7 Statement had been sent by the Tribunal with a covering letter dated 28 September 2011 and served upon the Respondent at HMP Ford. The Tribunal had obtained electronic proof of delivery by Track and Trace which confirmed receipt of the Rule 7 Statement on 29 September 2011. Notice of the substantive hearing had been issued and sent by the Tribunal to the Respondent on 17 November 2011 and the Tribunal had further obtained electronic proof of delivery by Track and Trace dated 18 November 2011.
4. Mrs Bromley said that the allegations were of the utmost seriousness, including dishonesty and that it was in the public interest to proceed with the substantive hearing without delay.

5. The Tribunal agreed and was satisfied as to service upon the Respondent and exercised its discretion to proceed in the absence of the Respondent.

### **Factual Background**

6. The Respondent was born on 10 May 1948 and was admitted as a solicitor on 2 December 1974.
7. At all material times the Respondent practised on his own account under the style of Thorburn & Co (“the firm”) of 23 New Street, Henley-on-Thames, Oxfordshire, RG9 2BP. The firm closed on 30 November 2008 and the Respondent’s practising certificate was terminated on 15 December 2008.
8. On 1 August 2007 an inspection of the books of account and other records of Thorburn & Co was commenced by Mr Shaw, a forensic investigation officer (“Forensic Investigation Officer”) of the Applicant. The Respondent had explained that he could not provide bank statements or books of account, which were maintained manually, because these documents had been seized by the police.
9. On 1 August the Respondent had told the FIO that the firm operated a client account and office account, as well as one client designated deposit account, with the Bank of Ireland. The Respondent had also explained that the firm held ten client designated deposit accounts (also referred to as “Professionals’ Accounts”) with the Bank of Scotland. The Respondent alone was able to operate these accounts. During the course of his investigations, the FIO had also become aware of another office account maintained by the firm at the National Westminster Bank Plc. The Respondent had failed to disclose the existence of this office account.
10. On 1 August, the Respondent had told the FIO that he was Company Secretary of a property management company called Flanagan Developments Limited, which was a family company, the major shareholder of which was his wife. The company operated from the same building as the Respondent’s firm.
11. The investigation resumed on 24 September 2007 following the return to the Respondent of some accounting records by the police. The resulting forensic investigation report (“the FI Report”) was dated 23 June 2009.
12. On 23 February 2009 in a telephone conversation with the FIO the Respondent had declined the FIO’s request to interview him.
13. In about June 2009 the Respondent was indicted to the Crown Court at Kingston upon Thames (“Indictment I”) on the basis of nine counts.
14. Subsequently the respondent was indicted to the Crown Court at Kingston upon Thames (“Indictment II”) on the basis of two further counts.
15. In respect of Indictment I, the Respondent pleaded guilty to the following counts:
  - 15.1 Count 3: False accounting, contrary to Section 17(1) of the Theft Act 1968 in that the Respondent dishonestly and with a view to gain for himself or another, or with intent

to cause loss to another, falsified documents made or required for an accounting purpose, namely client ledgers in respect of KB and KLCD;

- 15.2 Count 4: False accounting, contrary to Section 17(1) of the Theft Act 1968 in that the Respondent dishonestly and with a view to gain for himself or another, or with intent to cause loss to another, falsified a document made or required for an accounting purpose, namely a client ledger in the name of FP;
- 15.3 Count 5: Theft, contrary to Section 1(1) of the Theft Act 1968 in that the Respondent stole a credit balance in the sum of £100,000 belonging to DF; and
- 15.4 Count 8: Theft, contrary to Section 1(1) of the Theft Act 1968 in that the Respondent stole a credit balance in the sum of £12,747.89 belonging to CC.
16. In respect of Indictment II, the Respondent pleaded guilty to Count 2: Failing to make a required disclosure, contrary to Section 330(1) of the Proceeds of Crime Act 2002.
17. The Respondent's Counsel in the criminal proceedings applied to the court for an indication of sentence. In his application Counsel said that the Respondent had:

“treated funds in his firm in the manner of a common pool of money and did not use the money specifically for the purposes it was paid to him.”

He also stated

“In pleading guilty the defendant would be accepting that he acted dishonestly in that he treated funds as his own and risked its loss.”

18. In respect of the count of failing to make a required disclosure the Respondent's Counsel stated:
- “The Defendant did not know that the various and complex property transaction (sic), many of which involved the lodgement of cash deposits by SS involved the proceeds of crime.
- At the latest by the time of Mr S's arrest in March 2006 he accepts that various features of SS's business ought to have given rise to a suspicion on his part that the monies were tainted, such that he ought to have notified NCIS, in the prescribed way, of suspicious money transactions”.
19. In sentencing the Respondent, His Honour Judge Southwell had noted the Respondent's guilty pleas and said as follows:

"However you look at this case you have pleaded guilty to conduct which amounts to a serious breach of the trust imposed in you by those who engaged you to act as their solicitor in the course of their conveyancing transactions...

The whole point of your relationship with your clients in the context of your work is that, as their solicitor, they pay money to you or you receive funds on

their behalf, safe in the knowledge that the funds will be used strictly and only in accordance with their instructions and for their purposes alone.

That means not only that you should not steal in the conventional sense from them, so as to cause them permanent loss, but that you should not treat their funds as your own – in other words, dishonestly use them for your own purposes, albeit paying the funds back later.

That gives rise to risk, and risk there was to the clients who were subject of thefts. It is that element of trust that is central to a solicitor's relationship with his clients and which, if abused in a serious and significant way, is so serious that only a custodial sentence can be justified".

20. The following sentence was imposed on the Respondent:
  - 20.1 In respect of failing to make a required disclosure, contrary to Section 330(1) of the Proceeds of Crime Act 2002 he was sentenced to 9 months imprisonment concurrent. A confiscation Order was also made under the Proceeds of Crime Act 2002 for £196,198.00, payment of that sum in full within 9 months, with a default term (upon failure to pay) of 2 years imprisonment;
  - 20.2 In respect of Count 2, false accounting, contrary to Section 17(1) of the Theft Act 1968 he was sentenced to 12 months imprisonment concurrent;
  - 20.3 In respect of Count 3, false accounting, contrary to Section 17(1) of the Theft Act 1968 he was sentenced to 12 months imprisonment concurrent;
  - 20.4 In respect of Count 4, theft, contrary to Section 1(1) of the Theft Act 1968 he was sentenced to 16 months imprisonment and ordered to pay compensation of £12,666.67;
  - 20.5 In respect of Count 5, theft contrary to Section 1(1) of the Theft Act 1968 he was sentenced to 12 months imprisonment concurrent;
  - 20.6. He was ordered to pay prosecution costs of £25,000.
21. It was further ordered that the Respondent should pay the costs and compensation in full within 9 months.

#### **Witnesses**

22. None.

#### **Findings of Fact and Law**

23. **Allegation 1.1. That the Respondent acted contrary to Rules 1.02, 1.03, 1.04 and 1.06 of the Solicitors Code of Conduct 2007 ("SCC") in that he behaved in a way which compromised his independence or integrity, was likely to have diminished the trust the public placed in him or the legal profession and his duty to act in the best interests of his clients by virtue of his conviction on 19 February 2011**

**when the Respondent was upon his own confession convicted upon indictment of 1 count of Failing to make a Required Disclosure, 2 counts of False Accounting and 2 counts of Theft and on 29 June 2011 he was sentenced to 16 months imprisonment.**

Submissions on behalf of the Applicant

- 23.1 Mrs Bromley confirmed that it was her intention to rely on the Supplemental Rule 7 Statement and that the breaches in the Rule 5 Statement were covered by the conviction. The Rule 5 Statement could therefore lie on the file.
- 23.2 Mrs Bromley confirmed that the firm had closed on 30 November 2008 and the Respondent's practising certificate had been terminated as at 15 December 2008.
- 23.3 Mrs Bromley referred the Tribunal to the Rule 7 Statement which detailed Indictment I and the relevant counts against the Respondent. Mrs Bromley highlighted the references to dishonesty. Mrs Bromley also referred the Tribunal to the comments of His Honour Judge Southwell in his Judgment, where he had stated:

“However you look at this case you have pleaded guilty to conduct which amounts to a serious breach of the trust imposed in you by those who engaged you to act as their solicitor in the course of their conveyancing transactions...”.

- 23.4 Mrs Bromley said that the Judge had imposed a relatively lenient sentence. The Application for an Indication of Sentence document which had been filed by the Respondent's Counsel in the Crown Court proceedings had stated at paragraph 6 thereof:

"Indictment (I)

6. In respect of:

Count 3: No loss was occasioned to B  
Count 4: No loss was occasioned to C”.

- 23.5 Mrs Bromley did not agree that there had been no loss to clients of the Respondent. In relation to Mr F and the sum of £100,000, this had also been referred to in the Judgment of His Honour Judge Southwell wherein only £98,000 had been recovered, thereby resulting in a shortfall to the client of £2000. In addition, Mrs Bromley submitted that there had been no consideration of the client's expectations in relation to earning interest again in the case of Mr F, for the 10 month period for which the Respondent had utilised the monies. Similarly, in the matter of C, discount was to have been repaid to the London Borough of Barnet, which should have received monies some time ago but no award had been made for interest due.
- 23.6 Whilst not strictly relying on the Rule 5 Statement, Mrs Bromley said that some aggravating features had been detailed in that document, which included that the Respondent had tried to conceal what he had done particularly with regard to the office account which he had concealed and used to funnel money through. He had plainly attempted to hide this from the FIO but it had been discovered. The

Respondent had also sought to mislead his clients as to how their money had been held. In the case of client C, the client had been told that the money was on deposit when the Respondent had already taken it.

- 23.7 Mrs Bromley submitted that the breaches committed by the Respondent had been of the utmost seriousness. They had involved dishonest conduct and deliberate acts over a prolonged period of time when the Respondent had treated client monies as his own. The sentencing remarks of the Judge had included that the Respondent's actions had amounted to a serious breach of trust.

#### Submissions on behalf of the Respondent

24. None

#### **Previous Disciplinary Matters**

25. None.

#### **Mitigation**

26. None

#### **Sanction**

27. The Tribunal found the allegation proved against the Respondent and had had regard to the Supplemental Rule 7 Statement dated 26 September 2011 and the supporting documents.
28. The Tribunal was satisfied that the Respondent had acted contrary to Rules 1.02, 1.03, 1.04 and 1.06 of the SCC in that he had behaved in a way which had compromised his independence or integrity, was likely to have diminished the trust the public placed in him or the legal profession and his duty to act in the best interests of his clients by virtue of his conviction on 19 February 2011 when the Respondent, upon his own confession, had been convicted upon indictment of one count of Failing to make a Required Disclosure, two counts of False Accounting and two counts of Theft and on 29 June 2011 he had been sentenced to 16 months imprisonment.
29. These were serious matters and the Respondent had been convicted of criminal offences which had involved serious dishonesty. The Tribunal had noted the Judge's comments that the Respondent's actions had amounted to a breach of trust. It was incumbent upon the Tribunal to protect the public and the reputation of the profession. The Respondent's conduct, which was of the utmost gravity had damaged the reputation of the profession and had diminished the trust the public placed in the profession.
30. The Tribunal considered all of the sanctions available to it, but concluded that, for the reasons set out in the preceding paragraph, nothing short of strike off could be justified. Accordingly, the Tribunal Ordered that the Respondent be struck off the Roll of Solicitors.

**Costs**

31. Mrs Bromley confirmed that the Statement of Costs dated 24 November 2011 had been sent to the Respondent and he had made no representations regarding costs. The investigation had been difficult and whilst she acknowledged that this had in part been due to paperwork having been retained by the police, the Respondent had not been co-operative and had sought to mislead the FIO during the course of the investigation. It had also been apparent from the Judge's sentencing remarks that the Respondent was a man of means.
32. The Tribunal ordered that the Respondent pay the costs in total in the sum of £35,263.52. The Tribunal accepted that this had been a difficult investigation and that the Respondent had hidden one office account and had failed to co-operate with the FIO and ultimately, his regulator. The costs incurred were deemed to have been reasonable in all the circumstances.

**Statement of Full Order**

33. The Tribunal Ordered that the Respondent, James Thorburn-Muirhead solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £35,263.52.

Dated this 23rd day of December 2011

On behalf of the Tribunal

A N Spooner  
Chairman